



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: December 9, 2014

DATE: November 19, 2014
TO: Board of County Commissioners
FROM: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-2040, dsolaro@washoecounty.us
THROUGH: Kevin Schiller, Assistant County Manager
SUBJECT: Recommendation to approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Provide Operations and Maintenance Services for the Golden Valley Artificial Recharge Program. (All Commission Districts.)

SUMMARY

The purpose of this report is to support the merger of Washoe County Community Services' Water Utility (CSWU) with the Truckee Meadows Water Authority (TMWA) by recommending the Board of County Commissioners (Board) approve an Interlocal Agreement (ILA) with TMWA to provide operations and maintenance services for the Golden Valley Artificial Recharge Program as that program will be retained by the County after the merger.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

PREVIOUS ACTION

On December 9, 2009, the Board entered into an interlocal agreement governing a proposed merger of CSWU with the TMWA Board of Directors.

On August 23, 2011, the Board approved Ordinance 1470 establishing the current Golden Valley Artificial Recharge Program rates.

The Board and the TMWA Board of Directors held a joint meeting on March 19, 2014, and directed staffs from both entities to complete the merger with an anticipated closing date to occur in December 2014.

On October 28, 2014 the Board approved the Addendum to the Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority.

AGENDA ITEM # 867

On October 28, 2014, the Board held an introduction and first reading of an ordinance adopting the Washoe County Requirements and Schedule of Rates, Tolls, and Charges for the Golden Valley Artificial Recharge Program; providing for Rates, Payments, Procedures and their Enforcement relating to conditions of service; exemptions; appeal procedures; and other matters properly related thereto; and, set the public hearing for second reading and possible adoption for November 12, 2014, with the ordinance to become effective concurrent with the effective date of the Washoe County Water Utility and Truckee Meadows Water Authority merger.

On November 12, 2014, the Board held the second reading and adopted Ordinance 1548, Washoe County Requirements and Schedule of Rates, Tolls, and Charges for the Golden Valley Artificial Recharge Program; providing for Rates, Payments, Procedures and their Enforcement relating to conditions of service; exemptions; appeal procedures.

On November 19, 2014, the TMWA Board of Directors approved the Interlocal Agreement between Washoe County and TMWA to Provide Operations and Maintenance Services for the Golden Valley Artificial Recharge Program at their regularly scheduled meeting.

BACKGROUND

TMWA and the Board of County Commissioners entered into that certain Interlocal Agreement Governing the Merger of CSWU into TMWA dated January 29, 2010, which provides for the merger of the CSWU into TMWA (Merger ILA). Pursuant to Section 5.2 of the Merger ILA, the parties agreed to prepare an Addendum to the Merger ILA upon the completion of due diligence, which addendum would set forth the schedules identifying the Transferred Assets, Excluded Assets, Assumed Liabilities, and Excluded Liabilities and disclosures of conditions as set forth in Article VI of the Merger ILA.

It is recommended that the administration of the Golden Valley Recharge Program be retained by the County. In developing this recommendation consideration was given to local service providers with the capability to provide the necessary services. Ultimately it was determined that TMWA is best suited to provide the hydrological and field services necessary under the program and therefore Washoe County developed an agreement to provide these services until such time as they are not needed. This recommendation also recognizes the lack of an entity that TMWA could contract with that represents all of the parcel owners in the Golden Valley Recharge Program hydrographic basin as opposed to having agreements with each parcel owner. Finally, because the staff and their expertise in running the recharge program will be transferred to TMWA at the close of the merger it was deemed prudent to enter into an ILA with TMWA to manage the recharge program until such time as a more permanent solution can be crafted (i.e., the Golden Valley parcel owners establish a legal entity that can contract directly with TMWA).

The attached ILA will entail TMWA providing the necessary labor and services to assist in the County's operation of the Golden Valley Recharge Program, including: i) providing labor and assisting in the operations and maintenance of the injection wells and related water system facilities used by County in the Golden Valley Recharge Program; and ii) providing quarterly water quality sampling, water level monitoring, and annual

Nevada Department of Environmental Protection permit compliance reporting on behalf of County in connection with the Golden Valley Recharge Program.

The County will remain solely responsible for operating and administering the Golden Valley Recharge Program, including computation and preparation of user charges, responding to homeowner and/or media inquiries and issues, billing and collection of accounts from Golden Valley residents, maintaining books and records, and other costs and liabilities associated with the program, including utility costs, water supply, etc.

As the County will retain all of the assets of the Golden Valley Recharge Program this ILA specifies that the Golden Valley water resources means the water rights committed by and owned or leased by the County to the Golden Valley Recharge Program. Further, the agreement states that TMWA will treat and deliver water to the County through existing points of connection between the Golden Valley recharge facilities and TMWA's system in an aggregate quantity consistent with past practices up to, but not in excess of, the water resources less the return flow requirement, at such rate and times of delivery determined by TMWA which will not adversely affect delivery to full service customers. Delivery of water provided under this ILA shall be under and in accordance with TMWA's Rate Schedule Interruptible Water Service ("IWS"). Delivery of water under IWS is subject to interruptions or curtailments as set forth in TMWA Rules, including due to various operating conditions associated with protecting the overall integrity of the water system (such as the need to maintain drought reserves, insufficient water availability, or lack of available capacity); repairing, constructing, or maintaining facilities on TMWA's system; or other conditions and circumstances outside of TMWA's direct ability to control.

FISCAL IMPACT

The cost of the interlocal agreement with TMWA to provide the services for the operation of the Golden Valley Recharge Program will be paid by the parcel owners in the Golden Valley Recharge Program hydrographic basin.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Provide Operations and Maintenance Services for the Golden Valley Artificial Recharge Program.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Provide Operations and Maintenance Services for the Golden Valley Artificial Recharge Program."

**INTERLOCAL AGREEMENT BETWEEN WASHOE COUNTY AND THE
TRUCKEE MEADOWS WATER AUTHORITY TO PROVIDE OPERATIONS
AND MAINTENANCE SERVICES FOR THE
GOLDEN VALLEY ARTIFICIAL RECHARGE PROGRAM**

This Agreement is dated for identification purposes as of the 31st day of December, 2014, notwithstanding the date of the last-executed signature below, by and between Washoe County, a political subdivision of the State of Nevada (hereinafter "County") and the Truckee Meadows Water Authority, a Joint Powers Authority created pursuant to NRS Chapter 277 among Reno, Sparks and Washoe County, Nevada (hereinafter "TMWA").

RECITALS

WHEREAS, Washoe County and the Truckee Meadows Water Authority are public agencies authorized by chapter 277 of the Nevada Revised Statutes to enter into interlocal and cooperative agreements with each other for the performance of governmental functions.

WHEREAS, in response to declining water levels and water quality issues, Golden Valley residents requested that the County implement a groundwater injection program to seek to stabilize the declining groundwater levels through the injection of surface water into the Golden Valley aquifer. The aquifer is relied upon by local residents as their primary source of water for domestic wells.

WHEREAS, in 2002, the County adopted by ordinance the Golden Valley Recharge Program ("Golden Valley Recharge Program"), which program is funded through collections from parcels in the program area under Washoe County Ordinance 1470. The County owns and operates four injection wells, monitoring wells, valves, mains and related facilities which the County operates in conjunction with the Golden Valley Recharge Program and which are more particularly depicted in Exhibit "A" attached hereto ("GV Recharge Facilities").

WHEREAS, on or about January 29, 2010, the County and TMWA entered into that certain Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility Into the Truckee Meadows Water Authority ("Merger Agreement") pursuant to which the parties agreed to merge the Washoe County water utility into TMWA. The Golden Valley Recharge Program is not included as part of the Merger Agreement transaction.

WHEREAS, in connection with the Merger Agreement, a number of County employees with water operations expertise will become employees of TMWA on the closing date of the Merger.

WHEREAS, the County desires TMWA to provide certain labor and services to assist in the County's operation of the Golden Valley Recharge Program, including: i) providing labor and assisting in the operations and maintenance of the injection wells and related water system facilities used by County in the Golden Valley Recharge Program;

and ii) providing quarterly water quality sampling, water level monitoring, and annual Nevada Department of Environmental Protection (“NDEP”) permit compliance reporting on behalf of County in connection with the Golden Valley Recharge Program, on the terms and conditions stated herein.

NOW THEREFORE, it is agreed as follows:

1. Routine Maintenance and Monitoring Services. TMWA agrees to provide the following services to County (collectively, the “Services”) during the term of this Agreement: i) to perform regularly scheduled and routine maintenance of the GV Recharge Facilities (“Maintenance Services”), in accordance with the plan of operations and budget (the “Operations Plan”) developed and mutually agreed in advance by County and TMWA; ii) to provide water level monitoring, quarterly water quality sampling, and annual Nevada Department of Environmental Protection permit compliance reporting on behalf of County in connection with the Golden Valley Recharge Program (“Monitoring Services”), in accordance with the Operations Plan; and iii) extraordinary repairs, maintenance or emergency repairs of the GV Recharge Facilities as requested from time to time by the County (“Extraordinary Repair Services”) and agreed to by TMWA. In connection with the performance of the Services, TMWA may engage such employees, agents, contractors and consultants as it shall deem necessary or convenient from time to time.

1.1 Compensation for Services. County shall reimburse TMWA for the Service Costs incurred during the term of this Agreement. Costs associated with providing the Services (collectively, the “Service Costs”), including without limitation all costs and expenses for labor, equipment, materials, license and permit fees, laboratory fees, and reasonable fees for general overhead and/or administrative costs, will be tracked by project code by TMWA in addition to cost to deliver water as defined in Section 2.2. TMWA shall invoice County on a quarterly basis for the Service Costs, and County agrees to pay such invoices within thirty (30) days of the date of the invoice. TMWA will provide an estimate of the Service Costs to County for each fiscal year for inclusion in County’s budget beginning July 1st.

1.2 Access. County represents and warrants that it has secured, or will secure prior to the performance of the Services, such easements, licenses or other rights of access to the GV Recharge Facilities sufficient to allow TMWA to perform the Services. County agrees to provide TMWA with evidence of such access rights upon request.

2. Water Resources and Delivery of Water. For purposes of this Agreement, the term “GV Water Resources” shall mean the water rights committed by and owned or leased by the County to the Golden Valley Recharge Program, including i) 43.97 acre feet of Truckee River water rights purchased by the County from Golden Valley Recharge Program funds and committed by the County to the Golden Valley Recharge Program; ii) 75 acre feet of Truckee River water rights “leased” by County from the Washoe County Community Services Department (Regional Parks and Open Space) for the benefit of the Golden Valley Recharge Program; and iii) such other water rights acquired and committed by the County to the Golden Valley Recharge Program in the future. The County shall provide written notification of any changes, substitutions,

deletions, or acquisitions to GV Water Resources within 30 days of such event.

2.1. TMWA shall treat and deliver water to the County through existing points of connection between the GV Recharge Facilities and TMWA's system in an aggregate quantity consistent with past practices up to, but not in excess of, the GV Water Resources less the return flow requirement, at such rate and times of delivery determined by TMWA which will not adversely affect delivery to full service customers. County shall use the water delivered for groundwater recharge in the Golden Valley Recharge Program.

2.2 Delivery of water provided under this Agreement shall be under and in accordance with TMWA's Rate Schedule Interruptible Water Service ("IWS"). Delivery of water under IWS is subject to interruptions or curtailments as set forth in TMWA Rules, including due to various operating conditions associated with protecting the overall integrity of the water system (such as the need to maintain drought reserves, insufficient water availability, or lack of available capacity); repairing, constructing, or maintaining facilities on TMWA's system; or other conditions and circumstances outside of TMWA's direct ability to control. Delivery of water will be available as long as, in TMWA's judgment, the required water deliveries can be provided without jeopardizing the integrity of the TMWA system, or affecting TMWA's ability to modify, expand or repair the TMWA system as necessary to provide adequate deliveries of water to existing or future customers. TMWA may interrupt or curtail deliveries as provided herein and in TMWA Rules upon 24 hours' notice to County.

2.3 TMWA shall bill County directly and County will pay for the delivery of water service under this Agreement in accordance with TMWA's rules and customary billing practices.

3. Administration of Golden Valley Recharge Program. County shall remain solely responsible for operating and administering the Golden Valley Recharge Program, including computation and preparation of user charges, responding to homeowner and/or media inquiries and issues, billing and collection of bills from Golden Valley residents, maintaining books and records, and all other costs and liabilities associated with the program, including utility costs, water supply, etc. TMWA shall have no responsibility or liability with respect to the administration of the Golden Valley Recharge Program.

4. Cooperation and Future Planning. TMWA and County agree to participate and cooperate in the development of a recommended study for the Golden Valley Recharge Program which seeks to address long term sustainability of groundwater recharge issues in Golden Valley, including future operations, financial planning, water resources, future capital and O&M expenditures, operational responsibilities, respond to homeowner inquiries and issues, and program participant obligations.

5. Term and Termination. Either Party may terminate this Agreement upon one hundred eighty (180) day advance written notice to the other. This Agreement shall automatically terminate concurrently with any termination of the Golden Valley Recharge Program, should the County terminate such program for any reason. In the event the County fails to appropriate or budget funds for the purposes as specified in this

Agreement, County shall notify TMWA in writing and the Agreement will terminate on the date specified in the notice. The Parties understand that this funding out provision is required under NRS 244.320 and NRS 354.626. If this Agreement is terminated, County shall, no later than fifteen (15) days following the date of termination, pay TMWA for all amounts due under Section 2 through the date of termination.

6. Entire Understanding of the Parties. This Agreement and TMWA Rules (as applicable to the delivery of water) contain all the obligations and agreements of the parties with respect to the subject matter hereof, and oral or written obligations not contained herein shall have no force or effect to alter any term or condition of this Agreement, unless modified in accordance with Paragraph 5.

7. Amendment. This Agreement may be amended or modified only by the mutual written agreement of the County and TMWA and ratification by their respective governing boards.

8. Ratification By Governing Boards. This Agreement is contingent upon ratification by official action of the governing body of the parties hereto, and shall be effective on the closing date of the Merger.

9. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement (including, without limitation, Section 1) remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

10. Waiver. A waiver of any breach of any provision of this Agreement by any party shall not be construed to be a waiver of any preceding or succeeding breach.

11. Governing Law. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Nevada.

12. Indemnification

12.1 Each Party agrees to be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost, or judgment made against that Party arising from any negligent act or negligent failure to act by any of that Party's employees, agents in connection with the performance of obligations assumed pursuant to this Agreement.

12.2 Each Party further agrees, to the extent allowed by law pursuant to Chapter 41 of the Nevada Revised Statutes, to hold harmless, indemnify and defend the other from all losses, liabilities or expenses of any nature to the person or property of another, to which the indemnified party may be subjected as a result of any claim, demand, action or cause of action rising out of the negligent acts, errors or omissions on the part of employees or agents of the indemnifying party in relation to this Agreement.

13. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person other than the parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have set their hands with the intent to be bound.

TRUCKEE MEADOWS WATER
AUTHORITY, a Joint Powers Authority
created pursuant to NRS Chapter 277,

Dated _____, 2014

By: _____

Dated _____, 2014

WASHOE COUNTY BOARD OF
COMMISSIONERS

By: _____
David Humke, Chairman

ATTEST:

Washoe County Clerk

Exhibit "A" GV Recharge Facilities

